

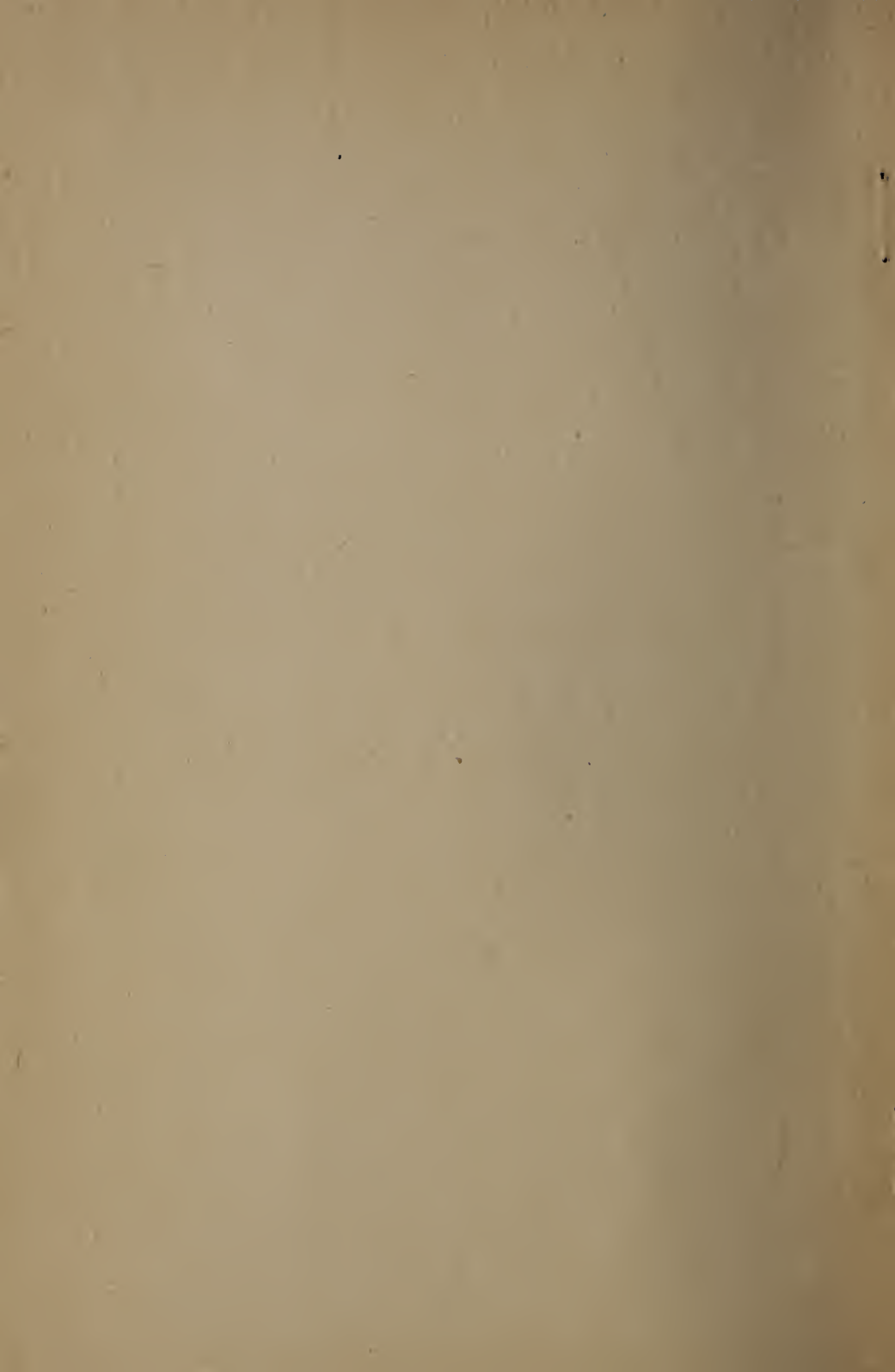
Is the Exemption of Intangible
Personalty Within the Power
of the General Court?

ARGUMENT BEFORE THE
Committee on Taxation of the Massachusetts
Legislature,

FEBRUARY 10, 1898.

By CHARLES R. ELDER.

BOSTON:
J. A. CUMMINGS PRINTING Co., 252 WASHINGTON STREET.
1898.



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EMBODYING THE ARGUMENT OF

CHARLES R. ELDER,

CITY SOLICITOR OF MALDEN,

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Recommendations of the Tax Commission.

1. An inheritance tax, levied with respect to realty as well as to personalty, at the rate of five per cent. with an exemption for estates not exceeding \$10,000 and an abatement of \$5,000 on estates between \$10,000 and \$25,000. The revenue from this tax to be distributed from the State treasury among the several cities and towns, one-half in proportion to population, one-half in proportion to assessed valuation.

2. A tax on occupiers in proportion to house rentals, only the excess over \$400 of rental being taxable.

3. Abolition of the present taxes on intangible personalty, such as stocks, bonds, loans on mortgage, income; the taxes recommended under 1 and 2 being relied on to yield at least as large a revenue as is now secured by the taxes to be abolished.

4. Assumption by the State treasury of county expenses.

5. Appropriation by the State of the revenue from taxes on corporate excess, now distributed among the several cities and towns.

[Bill accompanying the petition of Horatio G. Curtis. Taxation.]

COMMONWEALTH OF MASSACHUSETTS.

In the Year One Thousand Eight Hundred and Ninety-eight.

AN ACT.

To exempt Intangible Personal Property from Taxation as Personal Estate of Persons to be taxed.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows :

SECTION 1. Section four of chapter eleven of the public statutes, as amended by chapter seventy-six of the acts of the year eighteen hundred and eighty-two, and by chapter two hundred and twenty-eight of the acts of the year eighteen hundred and eighty-seven, and by chapter three hundred and sixty-three of the acts of the year eighteen hundred and eighty-eight is hereby further amended by striking out all of said section after the first three lines and inserting the following words: "But shall not include money at interest, nor debts due the persons to be taxed, except as provided in sections fourteen, fifteen and sixteen of this chapter, nor, except as provided in chapter thirteen, any public stocks or securities, stocks in turnpikes, bridges or moneyed corporations, or other corporations organized within or without the State, nor any bonds of any municipal, railroad, street railway or other corporations, wherever organized, nor any income derived from any source, except as provided in section eight," so as to read as follows:—

"Section 4. Personal estate shall, for the purpose of taxation, include goods, chattels, money, and effects wherever they are, ships and vessels at home or abroad, except as provided in section eight, but shall not include money at interest, nor debts due the persons to be taxed, except as provided in sections fourteen, fifteen and sixteen of this chapter, nor, except as provided in chapter thirteen, any public stocks or securities, stocks in turnpikes, bridges or moneyed corporations, or other corporations organized within or without the State, nor any bonds of any municipal railroad, street railway, or other corporations, wherever organized, nor any income derived from any source, except as provided in section eight."

SECTION 2. This act shall take effect on the first day of May, in the year eighteen hundred and ninety-nine.

SECTION 3. Chapter seventy-six of the acts of the year eighteen hundred and eighty-two, chapter two hundred and twenty-eight of the acts of the year eighteen hundred and eighty-seven, chapter three hundred sixty-three of the acts of the year eighteen hundred and eighty-eight, and all other acts and parts of acts inconsistent herewith are hereby repealed.

Is the Exemption of Intangible Personality Within the Power of the General Court?

MR. CHAIRMAN AND GENTLEMEN: —

It is my purpose to confine my remarks to the discussion of the proposed statute entitled “An Act to Exempt Intangible Personal Property from Taxation as Personal Estate of Persons to be Taxed,” and to the third recommendation of the majority report of the Tax Commission of 1897.

It is not intended to inquire into the expedience of the proposed legislation, and therefore, I shall have no occasion to consider the question whether or not the taxes proposed under sections one and two of the report would equal the revenue lost by the abolition of taxes on intangible personality. The rapidly increasing public indebtedness, necessarily adding to the annual tax levy, the increasing wealth of the people, and the fact that intangible property escapes to a great extent all taxation, are matters within the province of the legislature for its consideration upon the question whether more stringent laws relating to the collection of taxes are required.

The proposed abolition of taxes on stocks, bonds, loans on mortgage and income, when such securities run high in the millions and are held by comparatively few persons of the community, is a departure from the Massachusetts principle of proportionate and reasonable taxation, required under the fundamental law of the Commonwealth, and at the outset raises the question of the authority of the General Court to pass such legislation.

The power to exempt from taxation is, I suppose, implied in the power to tax, but the power of the General Court to tax is far from an absolute power. Its limitations are plain. The authority to tax is delegated by the Constitution to the General Court subject to the restriction and qualification that the tax on property shall be proportionate and reasonable. The courts of the Commonwealth have not hesitated to declare statutes imposing disproportional taxes beyond the power of the Legislature to enact. The authorities cited herein are Massachusetts cases, and these cases alone are urged in support of my contention because the decisions of the courts in other jurisdictions are governed by the fundamental law of such jurisdictions, which may materially differ from the provisions of the Constitution of Massachusetts.

It is intended to consider the proposed act *first* as a statute, the

object of which is the exemption of property, and *secondly* as an act to establish a system of valuation.

AN ACT OF EXEMPTION.

Assuming the proposed law to be an exempting act as its title indicates, it fails to meet the requirements of an exemption act in the following essential particulars:—

It is not a measure for the relief of persons who by reason of poverty or any other reason are unable to contribute to the payment of the public expenses.

Its object is not a public purpose in a legal sense, and therefore not valid as the exercise of any power to tax property. The exemption would apply to property not generally held by the inhabitants without the imposition of any duty upon the owner thereof or any restriction upon the use of the exempted property, and therefore, the exemption would affect the incidence of the whole tax. The title itself discloses a discrimination in favor of classes of property.

The duty of each individual to contribute his share to the expense of government is clearly prescribed in Article X of the Declaration of Rights in the following language:—

“ Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property according to standing laws. He is obliged consequently to *contribute his share to the expense of this protection*, to give his personal services or an equivalent when necessary, but no part of the property of an individual can with justice be taken from him or applied to public uses without his own consent, or that of the representative body of the people . . . And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.”

The proposed exemption certainly provides no contribution from the holders of such exempted property, for, instead of imposing a burden, it confers a direct benefit upon, and enhances the value of the exempted property as the direct consequence of the exemption. This is a private interest of the owners of the favored property. The public benefit, if any, would depend upon the use the owners might make of the property; and because no duty is imposed upon the owners with regard to its use, and no restriction is placed upon the property itself, it is not a public object in a legal sense.

It is urged with some force that the Commonwealth would derive a substantial advantage by the exemption of intangible personalty from taxation, on the ground that such a preference would eventually attract that class of property into the Commonwealth, and encourage and increase business enterprises.

Still that argument failed to impress the Court in the case of *Lowell vs. Boston*, 111 Mass. 454, involving the question of the constitutionality of Statute 1872, C. 364.

There the city of Boston was authorized by an act of the Legislature to issue \$20,000,000 in bonds, and to lend the pro-

ceeds of the same on mortgage to the owners of the land on which the buildings were burned by the great fire of 1872.

In this case the Court said :—

“If it be assumed that private interests of the owners will lead them to re-establish warehouses, shops, manufactories and stores, and that the trade and business of the place will be enlarged or revived by means of the facilities thus provided, *still these are considerations of private interests; and, if expressly declared to be the aim and purpose of the act, they would not constitute a public object in a legal sense.*”

Further the Court say, page 473 :—

“The expenditure authorized by this statute, being for private and not for public objects in a legal sense, it exceeds the constitutional power of the Legislature, and the city cannot lawfully issue the bonds for the purposes of the act.”

The statute decided unconstitutional in *Lowell vs. Boston* contained a provision providing for the reimbursement of the city, on account of the issue of and the liability to pay the bonds; and, for the purpose of securing the city against loss, there was a provision requiring mortgages upon the land and structures erected thereon, to be given to the city by the owners of such land. But the fact that the city would ultimately be reimbursed for all it should invest in the enterprise, even though the reimbursement was made by the persons who had shared the benefit, was held not sufficient to change the character of the enterprise. The loan of the credit of the city was for a private purpose.

The proposed statute contains no suggestion of a public purpose, and no provision to make good to the Commonwealth what it would lose by the exemption. But the argument is that other statutes will be passed which will reimburse the Commonwealth for any losses it might sustain by reason of the operation of the proposed act, and for that purpose a statute imposing a tax upon “Occupants of Habitations,” and another imposing a tax upon “Legacies and Successions” are recommended by the Commission.

Since it was held that the reimbursement provisions in St. 1872, C. 364, did not affect the obvious purpose of the statute, a private interest, there is even less force in the argument that the reimbursement provisions in subsequent statutes would avail anything. Besides, the constitutionality of an act of the Legislature must be determined by its own provisions. The advocates of the proposed legislation, when they point out a substitute for certain taxes heretofore raised, are dealing with a matter within the province of the Legislature, but when they propose to make use of that substitute for the purpose of giving force or validity to a statute which the Legislature has no power to enact, they confound the question of expediency, which is within the legislative power, with *absolute authority* to tax, which the Legislature does not possess under the Constitution. So it is no answer to the objection, on constitutional grounds, to this statute, to urge that the amount lost

by its enforcement will be made good by heavier assessments upon the property, or from new sources of income, such as assessments upon successions. Keeping in mind that exempting property from taxation is the exercise of the taxing power, your attention is called to the provisions of the Constitution which delegate to the Legislature the power to tax. The Constitution of Massachusetts, C. 1, Art. 4, authorizes the General Court

“to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and persons resident, and estates lying within the said Commonwealth; and also to impose and levy reasonable duties and excises upon any produce, goods, wares, merchandise and commodities, whatsoever, brought into, produced, manufactured or being within the same.” . . .

“And while the public charges of Government, or any part thereof shall be assessed on polls or estates, in the manner that has hitherto been practiced, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth, taken anew once in every ten years at least, and as much oftener as the General Court shall order.”

The first annual tax act passed after the adoption of the Constitution, St. 1780, C. 43, directing the apportionment and levy of a tax of three hundred and seventy-four thousand, seven hundred and ninety-five pounds, eight shillings and two pence, plainly shows the contemporaneous construction the legislators of that time put upon the Constitution.

There were property exemptions it is true, but these were mainly household furniture, wearing apparel, farming utensils, and the tools of mechanics, said by the Court in *Day vs. Lawrence*, 167 Mass., 371, to be

“kinds of property which every tax-payer might have, and the complete exemption of which would have little effect upon the incidence of the whole tax.”

Note the exceptions made in this Act.

“*Provided, nevertheless,* That the following persons, viz:—The President, Fellows, Professors, Tutors, Librarian and Students of Harvard College, who have their usual residence there, and settled Ministers of the Gospel, Grammar School Masters, are not to be assessed for their polls or their estates, unless their real estate be not under their actual management and improvement, or not in the parishes where they are settled; and also all persons who have the management and improvement of the estate of Harvard College are not to be assessed for the same; and if there are any other persons who through age, infirmity or poverty, are unable to pay as others towards the public charges, or any widows or orphans who, depending on the interest of their money for subsistence, have by the state of the currency, been so reduced as that in the judgment of the Assessors they ought to be relieved in their taxes in any such case, the Assessors may exempt their polls or estates, or abate any part of what they are set at as they, on their oaths, shall think just and equitable. And the Justices in their sessions, in their respective counties assembled, in granting a county tax or assessment, are hereby ordered and directed to apportion the same on the several towns and other places in such county in proportion to this tax. And the Assessors in each town in this Commonwealth are also directed in making a town or county tax or assessment to govern themselves by the same rule.”

Schedules were required, containing

"a true and perfect list of polls and of all their real and personal estate they are possessed of on the thirtieth day of May, agreeable to the description of real and personal estate, and incomes from professions, faculty, handicraft, trade or employment as aforesaid."

Persons failing to bring in a list were not entitled to apply to the Court of General Sessions, now County Commissioners, for abatement.

The list sworn to

"shall be a rate of that person's proportion to the tax, who presented the same, which the Assessors may not exceed."

The assessors are not bound to accept the list at the present time. They may go outside of it for information. *Hall vs. County Commissioners*, 10 Allen, 100.

Observe herein the recognition of the duty of each individual "to contribute his share to the expense of this protection," found in the Declaration of Rights. Observe also the Constitutional limitations upon the imposition of assessments, rates and taxes. Assessments are required to be proportional and reasonable. The assessors were authorized to exempt the aged, the infirm, the poor, and widows and orphans. Even these exemptions were not absolute as classes. The exemption provision required an investigation by the assessors who were reminded of the obligation of their oath of office. Exemptions then were made to lighten the burden of persons unable to bear taxation. They are now urged to relieve property of certain kinds from taxation. This is a departure from the principle of equal taxation.

Having made provision for the assessment of the polls and real estate, the tax act directed the assessors to assess

"on the inhabitants of each town or place according to the proportion of the amount and just value of their whole *personal* estate, including money at interest more than they pay interest for (excepting such monies as are lent to the government and by an act of government exempted from taxation), monies of all kinds in hand and also the amount of the just value of all goods, wares and merchandise, stock in trade, vessels of all sorts, with their stores, appurtenances and appendages, plate, horses, oxen and cattle, of all sorts and ages, sheep, swine and grain of all sorts, and all kind of produce of the land, and *all other property whatsoever*, excepting household furniture, wearing apparel, farming utensils, and the tools of mechanics, on the thirtieth day of May instant; and the current price of the real and personal estate on the said thirtieth day of May before mentioned, in gold or silver or in bills of credit, equivalent current within this Commonwealth, shall be considered as the just value of the same. And on the amount of their income from any profession, faculty, handicraft, trade or employment; and also on the amount of all incomes and profits gained by trading by sea and on shore."

Then follow provisions for taxing goods, wares, merchandise and commodities in trade.

The provisions in the original tax act, specifying the persons

who, under certain circumstances, might be exempted from taxation, show the interpretation the authors of that act gave to the Constitution in respect to the power conferred upon the legislature with respect to the exemption of persons from taxation. Successive legislatures from 1780 to the present time have recognized the limitations of the power to exempt property from taxation. Indeed the General Court has, from time to time, limited the amount of property that might be exempted as household furniture to a sum less than \$1,000, (St. 1829, C. 27), and tools of mechanics to the amount of \$100, (St. 1865, C. 206), until at the present time wearing apparel seems to be the only personal property unlimited in value which the owner may enjoy without taxation. And the fact that only a limited quantity of such properties, except wearing apparel, can be exempted under the statutes, notwithstanding their general distribution among taxpayers, not only indicates in a general way the construction the General Court has given to the Constitution upon the matter of exemption, but these limited exemptions furnish strong grounds for the support of the argument that only limited amounts of such property, even if generally distributed, can be exempted. The proposed exemption of classes of property in value perhaps exceeding all the remaining property subject to taxation, (see Report of Commissioners and the report of the Committee on Taxation of the Boston Executive Business Association), will, in my judgment, necessarily work such an inequality in the distribution of the burden of taxation as to make such legislation repugnant to the Constitution. The proposed act imposes no duty upon the fortunate holders of such property, nor any restriction upon its use. To all intents and purposes it is legislation for a private, not a public purpose, and, therefore, fairly comes within the doctrine laid down in *Lowell vs. Boston*.

Such legislation obviously will increase the value of private interests therein, and it does not even purport to be made for any public object. It is not a measure for the relief of persons who are unable to pay, but it is for the benefit of property and such persons as possess it. The ability of the owner to pay does not enter into the matter at all. The property exempted is not generally held by the taxpayers, and therefore the exemption will affect the remaining property by making the taxation upon it disproportionate. The power to exempt property from taxation is embodied in that branch of the Constitution authorizing the imposition of assessments, but requiring them to be proportional and reasonable; so an exemption must be both proportional and reasonable.

If the General Court has the power to exempt absolutely one-half of the taxable property in Massachusetts from taxation this year, what is to prevent the General Court from exempting the remaining half next year? If the power to tax is subject to limitations, so is the power to exempt from taxation, for the latter is the exercise of the power implied in the former. The proposed exemption of intangible property from taxation appears to me to

be neither proportional nor reasonable, and, therefore, in excess of the authority conferred upon the legislators.

METHOD OF VALUATION.

Assuming the proposed legislation is intended to establish a method of valuation as the body of the act indicates, it appears to me more objectionable than St. 1872, C. 306, which was decided to be unconstitutional in the case of *Cheshire vs. County Commissioners* on the ground that the method of valuation there provided, omitted an important element of value.

The case of *Inhabitants of Cheshire vs. County Commissioners*, 118 Mass., 386 (1875), was a case where objection was made to a statute on a ground that the method of valuation therein provided was unconstitutional. The statute was as follows:—

“All reservoirs of water, with the dams connected therewith and the lands under the same, used to maintain a uniform supply of water for mill power, shall be assessed for the purposes of taxation in the town or towns where located, at a valuation not exceeding a fair valuation of land of like quality in the immediate vicinity.”

The Court say (page 389),

“Practically it is impossible to secure exact equality or proportion in the imposition of taxes or distribution of public burdens requiring taxation. The test, in all legislative enactments affecting taxation, is that their aim be towards that result, by approximation at least. No enactment respecting taxation under this clause conforms to its provisions if it directly and necessarily tends to disproportion in the assessment. It appears to us that the practical operation of this statute, construed as we have found ourselves compelled to construe its terms, is directly and necessarily to produce disproportion to a greater or less extent in the levy of all taxes based upon valuations which include such property as that to which it applies. That being its necessary tendency, it is immaterial whether the effect upon the general distribution of the tax be great or small, it is equally in violation of the Constitution, and therefore not within the legitimate authority of the Legislature.”

The proposed statute under consideration appears to *exclude* equality and proportion. It requires assessors to exclude certain property in the valuation made by them, so did the statute declared unconstitutional in the above case, and the property and value so excluded were the additions and improvements upon certain lands having reservoirs of water upon them. The St. of 1872 was held unconstitutional for excluding one or more of the elements of value. The proposed statute excludes all of the elements of value, *viz.*: an entire class of property called intangible personalty. Therefore, I think the proposed statute unconstitutional, because it establishes a method of valuation which not only omits one element of value of property, but it omits all of the elements of value by omitting the property itself. The proposed statute establishes a method of valuation of property in general by providing that certain property shall be excluded from valuation. A brief review of a few of the cases will show, I think, the proposed

statute cannot stand the tests under the clause of the Constitution requiring taxes to be proportional and reasonable.

In the case of *Portland Bank vs. Apthorp*, 12 Mass., 252, (1815), which was a case of the taxation of a bank, held to be within the second branch of the taxing power, the Court defines the meaning of the words in the Constitution from which the authority of the Legislature to impose taxes and to obtain a revenue is derived, to wit:

"to impose and levy proportionate and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident, and estates lying within the Commonwealth,"

as a provision

"intended as a contribution of the individual citizens, in proportion to the property, whether real or personal, which they are respectively worth."

"The exercise of this power (that of imposing and levying rates and taxes), requires an estimate or valuation of *all* the property in the Commonwealth; and then an assessment upon each individual according to his proportion of that property. To select any individual or company, or any specific article of property, and assess them by themselves, would be a violation of this provision of the Constitution."

Is this not substantially what the proposed legislation will effect? Is this legislation calculated to require the individual citizen to contribute to the expense of the government in proportion to his property? I think not. It is calculated to require citizens to contribute in proportion to the amount of their holdings in certain classes of property.

Com. vs. The People's Five Cents Savings Bank, 5 Allen, 428, (1862), was a case involving the constitutionality of St. 1862, C. 224, imposing a tax on insurance companies and savings banks.

In respect to the claim that the tax could be maintained under the branch of the Constitution authorizing the Legislature

"to impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of, and persons resident, and estates lying within said Commonwealth,"

The Court said:

"Viewed as a tax assessed under this clause, it would be contrary to its provisions, because it is not proportional on all persons and estates in the Commonwealth, but is assessed on a certain class selected by the Legislature for the specific purpose of imposing a tax."

The statute was held to be constitutional on the ground that the tax was an excise on the franchise belonging to the defendants and within the doctrine of the case of *Portland Bank vs. Apthorp*, 12 Mass., 252.

The case of *Oliver vs. Washington Mills*, 11 Allen, 268, (1865), decided that the Legislature had no authority to require domestic corporations to pay into the treasury of the Commonwealth a certain portion of all dividends declared by them on shares of

non-resident owners, that the proposed tax was a tax on property, viz.: the shares of non-resident holders, and not a corporate charge. This case is authority that shares of a corporation are property of the shareholder. In the language of the Court

"the requirement of the Constitution is that all taxes shall be 'proportional.' If any force or effect is to be given to this word, it must be regarded as a restriction on the power of the legislative department of the government, and to have been intended to prevent the exercise of an unlimited right to impose taxes."

Com. vs. Hamilton Mfg. Co., 12 Allen, 298, (1865), decided as constitutional (St. 1864, C. 208), requiring domestic corporations to pay to the treasurer a tax upon the excess of the market value of the stock over the value of their real estate and machinery taxable in the city or town where they were situated; and the fact that the corporation owned bonds of the United States and that some of the stockholders lived in other States of the Union would not exempt it from liability to pay the full amount of the tax. Held this tax was upon the franchise of the corporation.

In this case the Court says, page 308:—

"But the legislation of this Commonwealth in relation to taxation, differs essentially from that of New York. Under the general laws regulating taxation in Massachusetts, corporations have never been liable to taxation for any personal estate owned by them, except machinery, which on account of its fixed character and connection with the buildings in which it is used, has been regarded as in the nature of real estate, and so taxable in the place where it is situated."

On the other hand, by the laws regulating taxation in New York, the corporation is liable to taxation on such portion of its capital not invested in real estate, and under the New York statutes any tax other than upon real estate is assessed upon the personal property of the corporation, whatever may be the method adopted to ascertain the amount. Besides,

"under the laws of New York, a portion of the capital of banks was required to be invested in public securities in order to furnish a safe basis for bills which the banks were authorized to issue."

DISCRIMINATION AGAINST CERTAIN CLASSES OF PROPERTY.

There is another objection to this law. It is a discrimination in favor of certain classes of personality, and so may come within the case of *Gleason vs. McKay*, 134 Mass., 419, where it was decided that St. 1878, C. 275, was unconstitutional.

The constitutional provision that the Legislature shall only impose proportional and reasonable taxes

"is violated if taxes are imposed upon one class of persons or property at a different rate from that which is applied to other classes, whether the discrimination is effected directly in the assessment or indirectly through arbitrary and unequal methods of valuation."

Cooley on Taxation, Chap. VI., page 189.

If the rate of taxation upon all classes of property must be the same, it seems to follow that the establishment of a method of valuation which excludes one entire class of property from valuation, will necessarily fix a higher rate on other classes of property.

In the case of *Northampton vs. County Commissioners*, 145 Mass., 108, the Court used the following language : —

“ If, for instance, the Legislature should arbitrarily designate a certain class of persons on whom, or a certain class of property on which, a tax was to be imposed, without reference to any rule of proportion or without regard to the share of the public charge which either should bear relatively to that borne by other persons or property, or without regard to any special benefit which might accrue to the property subjected to the tax, such imposition would be unlawful.”

The proposed act arbitrarily designates a certain class of property which shall be exempt from taxation and it necessarily follows that it is in effect an arbitrary designation of all other classes of property not included in its provisions as the sole subjects of taxation. For these reasons it is respectfully submitted that the act exempting intangible securities from taxation would be, if passed, unconstitutional and void.

In reply to the inquiry whether the exemption of \$2,000 income from taxation may also be unconstitutional, it is enough to point out the fact that the income tax is not a property tax strictly speaking, and therefore the imposition of such a tax is not the exercise of the limited power conferred by the first clause requiring taxes upon property to be proportional and reasonable. It could not be maintained under that clause. It is an excise tax authorized under another clause containing the single restriction that such a tax must be reasonable.

The case of *Wilcox vs. County Commissioners*, 103 Mass., 543, held such a tax valid as an excise tax.

There was intangible personalty at the time of the adoption of the Constitution, but the amount of it did not bear the same relative proportion to the whole that it now bears. Public securities were taxed as money at interest until the act of 1793, and private securities like railroad bonds have been held to be “ debts due ” under the statute, and the money invested in them as “ money ” at interest.”

Hale vs. County Commissioners, 137 Mass., 113.

The practical operation of the proposed legislation in the municipalities of the Commonwealth, and particularly in the city of Malden, will be discussed by Mayor Farnham. My duty ends with the presentation of the foregoing reasons in support of my contention, that the proposed legislation, if passed, would be repugnant to the provisions of the Constitution requiring taxes to

be proportional and reasonable. For more than a century the General Court has recognized the restriction upon its powers to tax, and at intervals the Courts have pointed out those restrictions in no uncertain terms. The Massachusetts system of taxation rests upon the just and broad principle of equality. The General Court has no authority to discriminate against classes of property, and it necessarily follows that the Legislature has no power to discriminate in *favor* of classes of property by exempting them from taxation unconditionally, for such legislation would indirectly impose a higher rate upon the unexempted classes of property.

It seems under the case of *Southampton vs. Easthampton*, 8 Pick , 380, that an assessment of half a poll tax, upon an individual is illegal. Would not a legislative enactment exempting properties of many classes, exceeding, perhaps, the value of the property remaining subject to taxation be void for a like reason?

The test applied in all of the Massachusetts cases involving the extent of the power conferred by the Constitution upon the Legislature to levy proportional assessments is whether or not the legislation aims at uniformity.

The present system of taxation meets the requirements of this test, for it in a general way provides for the taxation of all property. There are some exemptions heretofore noticed in part, but these exemptions appear to me to be justifiable for the reasons stated. These exemptions have never been sustained on the ground that the owners of such exempted property, by such exemption, would be induced to embark in business from which the community might derive an incidental advantage, but because the ownership of such exempted articles, as a rule, does not increase the ability of the owners to contribute toward the expense their protection entails upon society. The present system at least approximates exact justice. To perfect the operation of the present system, the General Court undoubtedly has authority to create tax districts and to enact legislation, making the entire State a tax district if it pleases, and generally to pass laws affecting taxation of property so long as such legislation tends toward uniformity. But the aim of the proposed legislation, it is respectfully submitted, is in an opposite direction toward disproportion, beyond the scope of the agency conferred upon the General Court, and therefore in excess of its authority.

